

(1916) 02 MAD CK 0040
In the Madras High Court

Kadirvelu Chetty alias Manappa Chetty and Another	APPELLANT
Vs	
Nanjundaiyar and Others	RESPONDENT

Date of Decision : 10-02-1916

Acts Referred:

Citation : 35 Ind. Cas. 88 : (1916) 3 LW 512

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—This is a suit by the plaintiffs against the petitioners, who are the trustees of a Vishnu temple, for a declaration that the

plaintiffs are entitled to perform a festival which they had been doing for a long time, without hindrance on the part of the trustees.

2. A preliminary issue was taken at the suggestion of the trustees as to whether this suit falls under the Religious Endowments Act, and as such, is

not maintainable without: the sanction of the District Court, or of the Advocate-General. The Munsif came to the conclusion that the suit was

maintainable. Against his decision on the preliminary issue Mr. Seshachariar has preferred this Civil Revision Petition. The first question that

suggests itself is whether Section 115 warrants interference by this Court with a ruling on a preliminary issue, although it goes to the maintainability

of the suit. I do not think it necessary to express any opinion on that question because on the merits I am of opinion that the decision of the District

Munsif is right.

3. There are really two questions which have been argued; first, whether the right claimed by the plaintiffs is a civil right, and secondly, whether,

supposing it is a civil right, the sanction of the District Court should have been

obtained under Religious Endowments Act before the institution of the suit. Upon the first of these questions there have been conflicting views to some extent, but upon certain essential points there is no difference of opinion. If the right litigated is a right to worship, it is a civil right, and nobody can prevent the worshipper from proceeding to the temple and worshipping the deity. See *Vengamuthu v. Pandaveswara* 6 M.P 151. Where the claim is made to an office emoluments, however insignificant the emoluments may be, the plaintiff is entitled to seek the aid of the Court to have his right established. There are numerous cases on the point. A third class of cases arises where a right has been acquired or exercised hereditarily for performing certain festivals in the temple and where such right is negatived by the Dharmdharma, In such cases, the person, whose rights have been infringed, is entitled to ask the Court to have that right declared in his favour. It was pointed out in a very recent case, *Channu Dat Vyas v. Babu Nandan* 6 Ind. Cas. 223 : 23 A.P 527 : 7 A.L.J. 529 that the right to perform festival in a temple will be regarded as a civil right, although, if it is unconnected with a temple, Courts will not entertain the claim. This is also the view taken in this Court in *Tholappala Charlu v. Venkata Charlu* 19 M.P 62 : 5 M.L.J. 209. There it was pointed out by the learned Judges of this Court that if the right is connected with a temple no question of emolument arises, and it is a civil right which can be enforced in a Court of Law.

4. Mr. Seshachariar has drawn my attention to *Subbaraya Mudaliar v. Vedantachariar* 28 M.P 23 : 14 M.L.J. 171 The suit in that case was to enforce a right unconnected with any office in the temple and was not connected with the performance of any festival. The learned Judges held that such a suit is not a suit of a civil nature. As regards *Karuppa Goundan v. Kolanthayan* 7 M.K 91 it is enough to say that that also was a case where there was no right to any office in the temple, nor were emoluments claimed from the temple. I am doubtful as to whether the position taken in that case can be regarded as good law having regard to the fact that prasadam like thulasi and the right to be served with holy water first in a Vishnu temple, have been regarded as civil rights. I doubt whether the right to receive sacred ashes and the claim to precedence to receive betel-nut do not stand on the same footing. However that may be, the case of *Karuppa*

Goundan v. Kolanthayan 7 M.P 91 does not affect the present case.

5. On the other hand in Vengamuthu v. Pandaveswara 6 M.L 151 where a dancing girl claimed a right to worship the deity and she was denied

that right, it was held that she could maintain a suit. A case very much in point is Srinivasa v. Tiruvengada 11 M. 450. In that case the plaintiffs

complained that the defendants were interfering with their right to receive crown and water at a certain festival. Collins, C.J., and Parker, J., came

to the conclusion, after a review of the earlier authorities, that that was a civil right. There was no question of office or emoluments in that case. It

was regarded purely as a civil right which the parties are entitled to enforce in a Civil Court.

6. For these reasons, I am of opinion that the right claimed is a civil right.

7. The question whether the Dharmakartas can impose certain conditions or not, is a question to be gone into on the merits. Notwithstanding that

the plaintiffs are entitled to bring this suit, it may be that the Dharmakartas can insist upon the observance of certain conditions: For example, one of

the conditions may be that it is open to the Dharmakartas to receive contributions from others to perform the festival on a grander scale than the

plaintiffs are really able to do. That is not a matter with which I am concerned at present. I, therefore, agree with the District Munsif on this point.

8. Upon the second question also I agree with him. Mr. Seshachariar argues that the reliefs claimed in the suit are covered by Sections 14 and 18

of the Religious Endowments Act and as the sanction of the District Court was not obtained prior to the institution of the suit, the suit should be

dismissed. There are three classes of cases which concern rights to enforce certain privileges in a temple. The object of a suit may be to secure to

the trust certain advantages: any two persons with the sanction of the Advocate-General, or the Collector of the District concerned, can institute a

suit in that behalf. The Religious Endowments Act empowers persons who have an interest in the temple to go to a Court of Law for a declaration

that the trustee is bound to carry out certain duties. There is a third class of cases where individuals can claim rights, either as citizens, or as having

a hereditary right, to worship in a temple, or perform certain festivals. It is really a direction that the officer in charge of the trust should perform the

duties according to mamool, and such a right as this does not require the sanction either of the Advocate-General or of the District Judge for its

institution. This is the view taken in Krishnaswami Iyenger v. Rangasawmy Iyengar 5 Ind. Cas. 76 : 19 M.L.J. 743 : 7 M.L.T. 248 That was also

the view taken in Subbaraya Mudaliar v. Vedantachariar 28 M.P 23 : 14 M.L.J. 171 The District Munsif draws attention to an earlier case in this

Court in Syed Amin Sahib v. Ibram Sahib 4 M.H.C.R. 112 All these cases make it clear that where an individual right is to be enforced, neither

Section 92 of the Civil Procedure Code, nor Sections 14 and 18 of the Religious Endowments Act, will apply.

9. The decision of the District Munsif is right for all these reasons. I, therefore, dismiss this petition with costs.